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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 07.08.2023

Judgment delivered on: 01.09.2023

+ W.P.(C) 16499/2022
VIKASH KUMAR

..... Petitioner

Through: Mr. R. V. Sinha, Mr. A. S. Singh and
Mr. Amit Sinha, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. T. P. Singh, Senior Central Govt.
Counsel for UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this petition is to an order dated May 20, 2022 passed by the Central Administrative Tribunal (hereinafter, referred to as the 'Tribunal') in O.A. No. 1543/2021, whereby the O.A. preferred by the petitioner was dismissed.

2. In brief, as per the case noticed in the impugned order, petitioner joined the Indian Revenue Service as Assistant Commissioner in 2011 and was promoted as Deputy Commissioner in 2014. During the course of his posting as Deputy Commissioner in 2017, he was placed under suspension vide order dated November 10, 2017 which has been continued from time to



time, since major penalty proceedings were contemplated.

3. In the first round of litigation, the continued suspension orders were challenged by the petitioner by preferring O.A. No. 3505/2018, which was dismissed by the Tribunal vide order dated December 14, 2018 in following terms:

"27. We, therefore, dismiss the O.A. However, we direct that the respondents shall make endeavor to file the charge memo within a period of three months from the date of receipt of copy of this order and when the Suspension Review Committee meets next, it shall specifically address the question as to whether it is desirable at all to continue the suspension, and whether the interests of the State and of the applicant would be served in case he is transferred to any other place by reinstating him. There shall be no order as to costs."

4. In the second round of litigation, O.A. No.1543/2021 was preferred by the petitioner seeking following reliefs:

"(a) call for the relevant file(s)/record(s) of the Respondents and peruse the same;

(b) hold and declare the extension of suspension vide letter dated 31.01.2019, 29.07.2019, 30.01.2020, 24.07.2020, 19.01.2021 & 15.07.2021 [Annexure A-1 Impugned Colly)] and any subsequent order based on such impugned orders continuing the suspension of the applicant as Illegal, arbitrary and discriminatory and consequently quash/revoke/set aside the same;

(c) hold and declare that the continued and prolonged suspension of the applicant is arbitrary, illegal and void ab-initio;

(d) in consequence of the prayer above in para (b to c) above, hold and declare that the applicant is entitled for reinstatement in service with immediate effect and further that he is deemed to have been reinstated in service w.e.f. 31.01.2019 which was passed by the Respondents after the judgment and order dated 14.12.2018, illegally;

(e) Hold and declare that the applicant herein is entitled for full pay and allowances at least from 31.01.2019 and accordingly appropriate



direction to the respondent to pay the difference between the salary and subsistence allowance paid with interest thereon @ 12% per month till payment;

(f) Award cost of this application and proceedings against the Respondents and in favour of the Applicant;

(g) May also pass further order(s) as deemed just and proper to meet the ends of justice.”

5. The same has been dismissed by the Tribunal vide order dated May 20, 2022 with the following observations:

“15. The above mentioned judgments squarely cover the applicant's case of continued suspension. However, in view of completion of various investigations and recommendations of major penalty action, already available with the respondents, the respondents should endeavour to take further necessary action for issuance of charge sheet, if so decided, and consider all these aspects during the next Suspension Review Committee meeting.”

6. Learned counsel for the petitioner assails the order passed by the Tribunal and submits that despite directions vide order dated December 14, 2018 in the first round of litigation in O.A. No.3505/2018, the suspension has continued in violation of Rules and judgments on issue, and charge memo is yet to be issued. Further, the petitioner has been transferred from the Office of Commissioner of GST, Central Excise, Kolkata to Principal Commissioner of CGST, Bhubaneswar vide order dated August 13, 2020 but has not been reinstated. It is further vehemently urged that the petitioner is in no manner responsible for completion of inquiry or delay in investigation by the Investigating Agencies and same is solely attributable to the respondents. The delay in issuance of charge memo is further contended to be contrary to the directions of the Tribunal as well as DoPT OM No. 11012/4/2003-



Estt.(A) dated 07 January, 2004 and OM F. No. 11012/04/2016-Estt.(A) dated August 23, 2016. As such, it is urged that continued and prolonged suspension of petitioner for more than five and a half years is arbitrary and violative of Articles 14 and 21 of the Constitution of India.

It is also urged that the judgments on issue reflect that wherever the disciplinary proceedings have been unduly prolonged along with suspension, the same have been set aside.

In support of the contentions, reliance is further placed upon *State of H.P. v. B.C. Thakur*, 1994 SCC (L&S) 835, *Union of India & Ors. v. Raj Kishore Parija*, 1995 Supp (4) SCC 235, *O.P. Gupta v. Union of India & Ors.*, 1987 (4) SCC 328, *Samiran Chakrabarty v. Union of India & Ors.*, 1992 SCC OnLine Cal 52, *Allahabad Bank v. Sandipta Gangopadhyay*, 2019 SCC OnLine Cal 2717, *Samir Kumar Roy Chowdhury v. Indian Drugs Pharmaceuticals Ltd*, 1997 SCC OnLine Cal 20, *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.*, (1978) 1 SCC 405, *Ajay Kumar Choudhary v. UOI & Anr.*, 2015 (7) SCC 291, *UOI & Anr. v. S.A. Sari*, 2017 SCC OnLine Ker 3575, *K. Padma Kumar v. State of Kerala & Ors.*, 2017 SCC OnLine Ker 39978, *UOI v. B. Anil Kumar*, 2017 SCC OnLine Ker 31390, *State of Tamil Nadu v. Promod Kumar, IPS*, AIR 2018 SC 4060, *Sandipta Gangopadhyay v. Allahabad Bank*, 2015 SCC OnLine CAL 3894, *Gulshan Choudhary v. Punjab & Sind Bank*, 2017 SCC OnLine J&K 284, *Govt. of NCT of Delhi v. Vijay Kumar Jha*, 2016 SCC OnLine Del 4167, *Office Liquidator v.*



Dayanand & Ors., 2008 (10) SCC 1, Sampad Narayan Mukharjee v. Union of India & Ors., 2019 SCC OnLine Cal 150, C.E. Eranimose v. State, 1970 SLR 520, S. Vijaykumar v. Principal Secretary/Transport Commissioner, Chepauk, W.P. No. 10701/2016, Order/judgment dated March 22, 2016 of Hon'ble High Court of Madras, J. John De Britto v. The District Collector, Dindigul District, WP (MD) Nos. 3997/2016 and 3590/2016, Order/judgment dated November 17, 2016 of Hon'ble High Court of Madras and Union of India v. Ashifuzaman & Anr., judgment dated July 30, 2020, W.P.(C) Nos. 12859/2020 & 12861/2020 of Hon'ble High Court of Orissa, Cuttack.

7. On the other hand, learned counsel for the respondents has reiterated the stand taken before the Tribunal. It is submitted that DRI, Kolkata Zonal Unit was investigating a case of suspected fraudulent exports to Bangladesh through Petrapole and other LCSs to earn undue duty drawback by a group of fraudsters and during course of investigation, the involvement of departmental officers was noticed. On completion of investigation, a show-cause notice dated August 26, 2016 and supplementary show-cause notice dated May 18, 2017 was issued by the DRI, charging departmental officers including petitioner for having smuggled/aided in smuggling and committing drawback frauds & other anti-departmental activities. It is further submitted that the petitioner was not a 'noticee' in the original show-cause notice dated August 26, 2016, but he along with other officers was made 'co-noticee' in the supplementary show-cause notice dated May 18, 2017. The drawback



amounts are alleged to have been unlawfully credited to the exporter's accounts and delivered in cash by the exporters to one Jyoti Biswas, who further delivered the same to the petitioner. An amount of Rs.4.25 crores (approximately) is alleged to have been delivered in cash to the petitioner by the exporters.

It is contended that keeping in view, the role of the petitioner, he was placed under suspension under Rule 10(1)(a) of the CCS (CCA) Rules, 1965, pending departmental proceedings vide order dated November 10, 2017. Further, the suspension was extended by the Disciplinary Authority on the recommendations of the Suspension Review Committee from time to time. Petitioner is also stated to have been arrested by CBI on November 02, 2020 and on completion of investigation, vide report dated March 31, 2021, CBI proposed RDA Major only against the petitioner. Also, penalties of Rs. 10,00,000/- under Sections 112(a) & 112(b) and Rs.10,00,000/- under Section 114AA of Customs Act, 1962 were imposed on the petitioner. It is also pointed out that out of the five proposals for launching prosecution under Customs Act, 1962, the prosecution sanction in four cases has been given.

Learned counsel for the respondents further submits that the Suspension Review Committee duly considered the reasons for extending the suspension beyond 90 days and the gravity of the irregularities weigh heavily against the petitioner. As such, it is submitted that there has been no irregularity in recommending the extension of suspension of the petitioner.



8. We have given considered thought to the contentions raised.

It is well settled that even though suspension is not specified under Rule 11 of Central Civil Services (Classification, Control & Appeal) Rules, 1965, as a punishment, an order of suspension affects a government servant injuriously in case departmental inquiry is not concluded within a reasonable time. In that sense, the continued suspension in a pending departmental inquiry becomes punitive in nature and as such if any employee is kept under suspension for unreasonably long period, the same may be unjustified.

However, at the same time, it may be noticed that the suspension is considered imperative in order to refrain an employee to perpetrate the alleged misconduct and to remove the impression that offending employee can get away even pending inquiry, without any impediment, and also in order to prevent the effort by delinquent employee to scuttle the inquiry or investigation or to win the witnesses. The circumstances may vary and have to be assessed on a case to case basis, factoring the nature of misconduct, gravity of allegations and the indelible impact it creates on the service pending inquiry or contemplated inquiry or investigation. The public interest remains one of the prime governing factors in this regard.

9. Observations of the Hon'ble Supreme Court of India in ***State of Orissa v. Bimal Kumar Mohanty, 1994 (1) L.L.N. 889***, after considering the ratio of earlier decisions may be beneficially referred in this regard:

"It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave



*charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. **It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal thus consider each case on its own facts and no general law could be laid down in that behalf.** Suspension is not a punishment but is only one of forbidding or disabling an employee to discharging the duties of office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruit and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry, etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."*

10. Learned counsel for the petitioner has vehemently placed reliance on the judgment of the Apex Court in ***Ajay Kumar Choudhary v. Union of India & Anr., 2015 (7) SCC 291*** which dealt with the issue of prolonged suspension of an employee pending criminal proceedings. It was held therein



that the currency of a suspension order should not extend beyond three months if within this period the Memorandum of Charges/Charge-sheet is not served on the delinquent officer/employee. Further, if the Memorandum of Charges/Charge-sheet has been served, a reasoned order must be passed for extension of suspension.

11. *Ajay Kumar Choudhary v. Union of India & Anr.* (supra) relied upon by learned counsel for the petitioner also came up for consideration in ***Rakesh Kumar Garg v. Union of India*, W.P.(C) 7071/2019, decided on July 05, 2019** by the **High Court of Delhi**, wherein a challenge was made to continued suspension of the petitioner since **July 16, 2018**. The petitioner therein who was posted as Chief Engineer in MES, Ministry of Defence faced serious allegations of corruption and investigation under Section 120B IPC read with Sections 7, 8, 10 and 12 of Prevention of Corruption Act. The Charge Memorandum was yet to be issued for initiation of disciplinary proceedings, since the investigation was pending. This Court relying upon earlier orders passed in ***Govt. NCT of Delhi v. Dr. Rishi Anand*, W.P.(C) 8134/2017 decided on September 13, 2017** declined to interfere with the continued suspension order of the petitioner considering the allegations against the petitioner and held that there was serious and valid consideration to justify the continued suspension of the petitioner.

The observations in para 17 to 19 in ***Dr. Rishi Anand*** (supra) are also apt to be noticed and clearly spell out that power of competent authority to pass orders of suspension have not been extinguished in ***Ajay Kumar***



Choudhary (supra) merely because the charge-sheet is not issued within three months of suspension but the said power can be exercised if good reasons are forthcoming:

“17. It may not always be possible for the government to serve the charge sheet on the officer concerned within a period of 90 days, or even the extended period, for myriad justifiable reasons. At the same time, there may be cases where the conduct of the government servant may be such, that it may be undesirable to recall the suspension and put him in position once again, even after sanitising the environment so that he may not interfere in the proposed inquiry. On a reading of Ajay Kumar Choudhary (supra), we are of the view that the Supreme Court has not denuded the Government of its authority to continue/ extend the suspension of the government servant – before, or after the service of the charge sheet – if there is sufficient justification for it. The Supreme Court has, while observing that the suspension should not be extended beyond three months – if within this period the memorandum of charges/ charge-sheet is not served on the delinquent officer, has stopped short of observing that if the charge memo/ charge-sheet is not issued within three months of suspension, the suspension of the government servant shall automatically lapse, without any further order being passed by the Government. No such consequence – of the automatic lapsing of suspension at the expiry of three months if the charge memo/ charge-sheet is not issued during that period, has been prescribed.

18. The direction issued by the Supreme Court is that the currency of the suspension should not be extended beyond three months, if the charge memorandum/ charge-sheet is not issued within the period of 3 months of suspension. But it does not say that if, as a matter of fact, it is so extended it would be null and void and of no effect. The power of the competent authority to pass orders under Rule 10(6) of the CCS (CCA) Rules extending the suspension has not been extinguished by the Supreme Court. The said power can be exercised if good reasons therefor are forthcoming.

19. The decision of the Supreme Court in Ajay Kumar Choudhary (supra) itself shows that there cannot be a hard and fast rule in this regard. If that were so, the Supreme Court would have quashed the suspension of Ajay Kumar Choudhary. However, in view of the fact



that the charge memo had been issued to Ajay Kumar Choudhary – though after nearly three years of his initial suspension, the Supreme Court held that the directions issued by it would not be relevant to his case.

20. From a reading of the decision in Ajay Kumar Choudhary (supra) and Rule 10 of the CCS (CCA) Rules, it emerges that the government is obliged to record its reasons for extension of the suspension which, if assailed, would be open to judicial scrutiny – not as in an appeal, but on grounds available in law for judicial review of administrative action.”

The ratio as laid down in ***Dr. Rishi Anand*** (supra) has also been reiterated by this Court in ***Dinesh Bishnoi v. Union of India***, 2023 SCC OnLine Del 4023.

12. The observations made by the Tribunal in para 14 of the impugned order referring to ***P. Kannan v. Commissioner for Municipal Administration and Others***, 2022 SCC OnLine Mad 1154 which considered the ratio in ***Ajay Kumar Choudhary v. Union of India & Anr.***(supra) are also relevant and may be beneficially reproduced:

“14. Hon’ble High Court of Judicature at Madras in a very recent judgment delivered on 15.03.2022 has also considered most of the previous, judgments relied upon by the applicant, including Ajay Kumar Choudhary (supra), and held as under:

*"33. Referring to the aforesaid judgment of the Apex Court, a Division Bench of this court in **The Superintending Engineer, TANGEDCO and another v. Mohan Kumar**, [Judgment dated 20.1.2022 passed in W.A. (MD) NO.1827 of 2021] held as under:*

"20. In the case of Bimal Kumar Mohanty (supra), the Apex Court held that suspension is not a punishment, but only one for forbidding or disabling an employee to discharge the duties of office or post held by him. It is with the direction that each case may be considered on its facts and taking into account the gravity of the offence or the misconduct. The interference with the order of suspension should not be driven in reference to a judgment, but



needs to be determined on facts and after considering the rules governing the delinquent. Judicial review in such matters should be minimal. In the instant case, the allegation against the delinquent is quite serious, as he not only demanded but accepted bribe and was caught red-handed by the Anti-Corruption Department. The aforesaid were the relevant facts, but were not considered by the learned Single Judge while causing interference with the order of suspension. It is even after ignoring the earlier judgment of the Division Bench in the case of A. Srinivasan (supra), wherein it was categorically held that the judgment of the Apex Court in the case of Ajay Kumar Choudhary (supra) does not evolve a general principle for causing interference with the order of suspension if charge-sheet is not served or charge memo is not filed within three months of the order of suspension. The finding of the Division Bench of this Court in the case of A. Srinivasan (supra) has even been ignored, though binding in nature.

21. In view of the above, we find reasons to cause interference with the judgment of the learned Single Judge as none of the judgments cited by learned counsel for the writ petitioner/non-appellant provide assistance on the issue, rather those judgments have been given referring to the judgment in the case of Ajay Kumar Choudhary (supra), without analyzing the fact that even in the case of Ajay Kumar Choudhary (supra), the order of suspension was not interfered with by the Apex Court, though the charge-sheet in the said case was filed after three months since the date of initial suspension of the delinquent employee."

[emphasis supplied]

34. For the foregoing reasons, the reference is answered by holding that:

*(i) The judgment of the Apex Court in the case of **Ajay Kumar Choudhary**, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/chargesheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension.*

*(ii) The judgment in **R. Balaji**, supra, has no reference to the earlier judgments of co-equal strength and is thereby rendered per incuriam.*

(iii) The issue of challenge to the order of suspension should be analyzed on the facts of each case, considering the gravity of the charges and the rules applicable.

(iv) Revocation of suspension with a direction to the employer to post the delinquent in a non-sensitive post cannot be endorsed or directed as a matter of course. It has to be based on the facts of each case and after noticing the reason for the delay in serving the memorandum of charges/charge-sheet"



The above mentioned judgments clearly hold that suspension can be continued depending upon gravity of offences. In the present case, the applicant is under investigation in various cases by the CBI and Vigilance organisation. His prosecution and also major penalty action is contemplated against him. The charges for which he is under investigation are of very serious nature and, therefore, his continued suspension does not call for any interference by this Tribunal."

13. Reverting back to the facts of the present case, it may be noticed that petitioner faces serious and grave charge for aiding in smuggling and committing drawback frauds and other anti-departmental activities, for which sanction also stands granted for prosecution in respect of four out of five cases. Penalty also stands imposed in the proceedings under Section 112(a) & 112(b) and under Section 114AA of the Customs Act, 1962. Further, proceedings also stand initiated against the petitioner under Prevention of Corruption Act, apart from departmental proceedings. The continuation of investigation by various agencies after the earlier round of litigation, appears to be the sole reason for non-issuing of charge-sheet to the petitioner and also resulted in continued suspension.

14. Considering the serious nature of charges, which have remained under investigation by various agencies against the petitioner and public interest, we are unable to accept the contention raised by learned counsel for the petitioner, that since the petitioner has not been responsible for delay in conduct of investigation or other proceedings, he deserves to be reinstated.

We are of the considered opinion that no grounds are made out for interference in the impugned order passed by the Tribunal. The revocation of suspension and reinstatement of the petitioner, in the peculiar



circumstances cannot be directed merely because the charge-sheet could not be issued to the petitioner. Suffice to state that sufficient reasons have been pointed out by the respondents for delay in issuing of charge-sheet.

Writ petition is accordingly dismissed. In the facts and circumstances, no orders as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

SEPTEMBER 01, 2023/R/sd/v

